

Representative Karianne Lisonbee proposes the following substitute bill:

BAIL BOND AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends provisions related to the posting of bail.

Highlighted Provisions:

This bill:

- ▶ requires a judge or magistrate to set bail at a single amount;
- ▶ authorizes a judge or magistrate to specify the method of bail in certain circumstances; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

77-20-1, as last amended by Laws of Utah 2017, Chapters 289, 311, and 332

77-20-4, as last amended by Laws of Utah 2017, Chapter 304

Be it enacted by the Legislature of the state of Utah:

1st Sub. H.B. 428



26 Section 1. Section 77-20-1 is amended to read:

27 **77-20-1. Right to bail -- Denial of bail -- Hearing.**

28 (1) As used in this chapter:

29 (a) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.

30 (b) "Surety" and "sureties" mean a surety insurer or a bail bond agency.

31 (c) "Surety insurer" means the same as that term is defined in Section 31A-35-102.

32 (2) A person charged with or arrested for a criminal offense shall be admitted to bail as
33 a matter of right, except if the person is charged with a:

34 (a) capital felony, when the court finds there is substantial evidence to support the
35 charge;

36 (b) felony committed while on probation or parole, or while free on bail awaiting trial
37 on a previous felony charge, when the court finds there is substantial evidence to support the
38 current felony charge;

39 (c) felony when there is substantial evidence to support the charge and the court finds
40 by clear and convincing evidence that the person would constitute a substantial danger to any
41 other person or to the community, or is likely to flee the jurisdiction of the court, if released on
42 bail; or

43 (d) felony when the court finds there is substantial evidence to support the charge and
44 it finds by clear and convincing evidence that the person violated a material condition of
45 release while previously on bail.

46 (3) Any person who may be admitted to bail may be released by ~~written undertaking~~
47 ~~or an equal amount of cash bail~~ posting bail in the form and manner provided in Section
48 77-20-4, or on the person's own recognizance, on condition that the person appear in court for
49 future court proceedings in the case, and on any other conditions imposed in the discretion of
50 the magistrate or court that will reasonably:

51 (a) ensure the appearance of the accused;

52 (b) ensure the integrity of the court process;

53 (c) prevent direct or indirect contact with witnesses or victims by the accused, if
54 appropriate; and

55 (d) ensure the safety of the public.

56 (4) (a) Except as otherwise provided, the initial order denying or fixing the amount of

57 bail shall be issued by the magistrate or court issuing the warrant of arrest.

58 (b) A magistrate may set bail upon determining that there was probable cause for a
59 warrantless arrest.

60 (c) A bail commissioner may set bail in a misdemeanor case in accordance with
61 Sections 10-3-920 and 17-32-1.

62 (d) A person arrested for a violation of a jail release agreement or jail release order
63 issued in accordance with Section 77-20-3.5:

64 (i) may not be released before the accused's first judicial appearance; and

65 (ii) may be denied bail by the court under Subsection 77-20-3.5(9) or (11).

66 (5) The magistrate or court may rely upon information contained in:

67 (a) the indictment or information;

68 (b) any sworn probable cause statement;

69 (c) information provided by any pretrial services agency; or

70 (d) any other reliable record or source.

71 (6) (a) A motion to modify the initial order may be made by a party at any time upon
72 notice to the opposing party sufficient to permit the opposing party to prepare for hearing and
73 to permit any victim to be notified and be present.

74 (b) Hearing on a motion to modify may be held in conjunction with a preliminary
75 hearing or any other pretrial hearing.

76 (c) The magistrate or court may rely on information as provided in Subsection (5) and
77 may base its ruling on evidence provided at the hearing so long as each party is provided an
78 opportunity to present additional evidence or information relevant to bail.

79 (7) Subsequent motions to modify bail orders may be made only upon a showing that
80 there has been a material change in circumstances.

81 (8) An appeal may be taken from an order of any court denying bail to the Supreme
82 Court, which shall review the determination under Subsection (2).

83 (9) For purposes of this section, any arrest or charge for a violation of Section
84 76-5-202, Aggravated murder, is a capital felony unless:

85 (a) the prosecutor files a notice of intent to not seek the death penalty; or

86 (b) the time for filing a notice to seek the death penalty has expired and the prosecutor
87 has not filed a notice to seek the death penalty.

88 Section 2. Section 77-20-4 is amended to read:

89 **77-20-4. Bail to be posted in cash, by credit or debit card, or by written**

90 **undertaking -- Specific bail methods.**

91 [~~(1)~~ ~~Bail may be posted:~~]

92 (1) (a) Except as provided in Subsection (2), the judge or magistrate shall set bail at a
93 single amount per case or charge.

94 (b) Subject to Subsection (2), a defendant may choose to post the amount described in
95 Subsection (1)(a) by any of the following methods:

96 [~~(a)~~] (i) in cash;

97 [~~(b)~~] (ii) by written undertaking with [or without] sureties [at the discretion of the
98 magistrate; or];

99 (iii) by written undertaking without sureties, at the discretion of the judge or
100 magistrate; or

101 [~~(c)~~] (iv) by credit or debit card, at the discretion of the judge or bail commissioner.

102 (2) A judge or magistrate may limit a defendant to a specific method of posting bail
103 described in Subsection (1)(b)(i), (ii), (iii), or (iv):

104 (a) if, after charges are filed, the defendant fails to appear in the case on a bail bond
105 and the case involves a violent offense;

106 (b) in order to allow the defendant to voluntarily forfeit bail in accordance with Section
107 77-7-21 and the offense with which the defendant is charged is listed in the shared master
108 offense table as one for which an appearance is not mandatory;

109 (c) if the defendant has failed to respond to a citation or summons and the offense with
110 which the defendant is charged is listed in the shared master offense table as one for which an
111 appearance is not mandatory;

112 (d) if a warrant is issued for the defendant solely for failure to pay a criminal judgment
113 account receivable, as defined in Section 77-32a-101, and the defendant's bail is limited to the
114 amount owed; or

115 (e) if a court has entered a judgment of bail forfeiture under Section 77-20b-104 in any
116 case involving the defendant.

117 [~~(2)~~] (3) Bail may not be accepted without receiving in writing at the time the bail is
118 posted the current mailing address, telephone number, and email address of the surety.

119 [~~(3)~~] (4) Bail posted by debit or credit card, less the fee charged by the financial
120 institution, shall be tendered to the courts.

121 [~~(4)~~] (5) Bail refunded by the court may be refunded by credit to the debit or credit
122 card, or cash. The amount refunded shall be the full amount received by the court under
123 Subsection [~~(3)~~] (4), which may be less than the full amount of the bail set by the court.

124 [~~(5)~~] (6) Before refunding bail that is posted by the defendant in cash, by credit card, or
125 by debit card, the court may apply the amount posted toward accounts receivable, as defined in
126 Section 77-32a-101, that are owed by the defendant in the priority set forth in Section
127 77-38a-404.

128 Section 3. **Effective date.**

129 This bill takes effect on ~~H~~→ ~~September~~ **October** ←~~H~~ 1, 2019.